

SUBCHAPTER a: SERVICE DELIVERY
PROCEDURES 307 INDIAN CHILD WELFARE SERVICES
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== Section 307.1 Purpose

Section 307.2 Definitions

"Indian," as used in this rule, means American Indian.

Section 307.3 Intake Information

a) Inquire About Indian Lineage

Intake workers are to identify children under 18 who are American Indians or who are the biological children of American Indians. Unless the biological father has acknowledged paternity in writing within the past two years, his Indian lineage does not affect the child's Indian status. In contacts with:

- the child,
- the child's parents, guardian, or custodian,
- any reporter of child abuse or neglect, and
- any agency or individual known to be involved with the child

the worker is to ask whether the child is an American Indian.

b) Determine Indian Lineage

If any of the persons listed in Section 307.3a) state the child is an American Indian, or if the worker has some other reason to believe the child may be an American Indian, the worker is to determine the child's Indian lineage. If the child is not a registered member of an Indian tribe or if other verification of the child's Indian lineage is not available locally, the worker is to write the:

Department of Interior
Bureau of Indian Affairs
Minneapolis, Minnesota 55401

for a determination of whether the child is an American Indian. In this letter, include the child's name, the parents' names, the grandparents' names, and any other available information which may help determine the child's Indian status.

When parents are surrendering an Indian child for adoption, they may not want their tribe to know they are surrendering their child. In this instance, provide all of the information required above, but ask the Bureau of Indian Affairs not to divulge this inquiry to the tribe.

Multiple Tribes When the child is a member of more than one tribe or may be eligible for membership in more than one tribe, the worker
// shall record all of the possible tribes on a CFS 492, Case Entry. It is the court's responsibility to determine which tribe shall be considered the child's tribe for the court proceedings. Department staff are not to intervene in this decision, but are to record the court's decision on a CFS 492.

c) Provisions of the Indian Child Welfare Act

Intake staff are to inform Indian children who are able to participate in the planning as defined in Part 305, Client Service Planning, and their parents, guardians, or custodians, that Indian children have special protections under the Indian Child Welfare Act. Even if one of the parents, guardians, or custodians of the Indian child is

not an Indian, the Indian Child Welfare Act applies.

If the parents, guardians, or custodians of the Indian child do not understand English, intake staff are to locate an interpreter who can explain these protections in a language they can understand. If an Indian interpreter is not available locally, staff are to contact the Bureau of Indian Affairs in Minneapolis, Minnesota and request that an interpreter be provided.

Section 307.4 Services Which Trigger the Indian Child Welfare Requirements

- a) The worker shall document compliance with the Indian Child Welfare Act provisions concerning out-of-home placements on the CFS 497.
// For substitute care placements, this documentation shall include:
- . an explanation of Department efforts to locate placements in the preferred order, and
 - . for each placement in this preferred order that was deemed inappropriate for the child, the reasons why the placement was found not suitable.
- For each potential adoptive home which was rejected, the worker is
// to document on the CFS 497.
- . the reasons why the home was found not suitable,
 - . what services were offered to upgrade the home, including a specific explanation of whether a subsidized adoption was explored, and
 - . whether the family accepted or rejected the services which were offered.
- b) If the Indian child's tribe establishes a different preference for out-of-home placements, the worker shall document the changed order and
// the Department's compliance with it on the CFS 492, Case Entry.

Section 307.5 Notification of the Indian Child's Tribe

a) Non-Emergency Involuntary Proceedings

- 1) When petitioning the Juvenile Court for guardianship of an Indian child, the worker or court liaison is to provide the following information in a report to the court:
- . the child's name and age and the address from which the child was removed;
 - . the name and address of the child's parents and Indian custodian, if any. If the whereabouts of the parents or custodian are unknown, include an explanation of the efforts to locate them;

- . the tribal affiliations of the child and the parents and/or Indian custodians; and
 - . a statement of the specific services offered to assist the parents or Indian custodian so the child may remain at home or safely be returned to their custody. Include a description of the qualifications of the service provider to work with Indian families and a detailed description of the services which were accepted, the services which were rejected, the parents' cooperativeness or uncooperativeness and any other information which would clarify the relevancy of these services to the safety of the child.
- // 2) The court is responsible for notifying the parent and the Indian child's tribe of the court proceedings.
- 3) The worker is to photocopy Appendix I of these procedures and give it to the caretaker from whom the child was removed.
The worker is to document on a CFS 492 the date this information was provided to the caretaker. If the appendix was mailed, record the address to which it was mailed.

b) Emergency Involuntary Proceedings

When petitioning the Juvenile Court for guardianship of an Indian child who was taken into temporary protective custody and subsequently placed out of the home, the worker or court liaison is to provide the information required in a) above to the extent it is available. In addition, provide a specific and detailed explanation of why temporary protective custody was taken.

Section 307.6 Retaining Custody for Involuntary Placements

- a) When securing evidence to support the involuntary placement of an Indian child, the worker is to seek advice from the members of the Indian child's tribe, from the Indian child welfare agencies, or from Indian community organizations which have extensive knowledge of the child-rearing practices of that tribe. If an Indian parent is using child-rearing practices which are customary for that tribe, use of these practices does not constitute clear and convincing evidence of harm even if the practice is not acceptable in non-Indian communities.
- b) In addition, clear and convincing evidence of serious emotional or physical damage must be supported by the testimony of qualified expert witnesses. For purposes of an involuntary child custody proceeding involving an Indian child, a qualified expert witness is:
- . a member of the Indian child's tribe who is recognized by the tribe as knowledgeable in tribal customs and child-rearing practices,

- . a person who has had experience in delivery of services to Indian families and who has extensive knowledge of child-rearing practices within the Indian child's tribe, or
- . a professional person having substantial education and experience in the area of Indian child care practices.

Section 307.7 Terminating Parental Rights

- a) When the service plan for the American Indian child requires the termination of parental rights, staff are to photocopy Appendix II of these procedures and give it to the parents. The worker is to document on a CFS 492 the date the appendix was given to the parents. If the appendix was mailed, record the address to which it was mailed.

== b)

- c) When the parents of an American Indian child wish to surrender the child for adoption, staff are to photocopy Appendix III of these procedures and give it to the parents. When the appendix has been thoroughly explained to the parents, ask each parent to sign the Appendix for Use With Voluntary Adoption Surrender/Consent Forms as found in Appendix IV of these procedures. The worker is to document on a CFS 492 the date the appendix was given to the parents and the date the appendix was signed.

The worker is to request a court date so the adoptive surrender/consent can be executed in court.

== d)

Section 307.8 Transfer of Jurisdiction

== a)

== b)

- c) When the court has ordered the transfer of jurisdiction from an Illinois court to an Indian tribal court, staff are to make the transfer as easy as possible. Copies of case information relating to the child are to be provided, upon the tribe's written request.

The Department does not pay for transporting the child to the tribal court.

INDIAN CHILD WELFARE ACT PROVISIONS FOR INVOLUNTARY
PLACEMENTS OF AMERICAN INDIAN CHILDREN

- 1) The parents, guardians, or custodians of an Indian child have the right to receive child protective or child welfare services so the child can remain in the home, if possible. These services shall be consistent with the way of life of the Indian child's tribe.
- 2) When selecting an out-of-home placement for an American Indian child, placements must be considered in the following order:
 - . a member of the Indian child's extended family;
 - . a foster home licensed, approved or specified by the Indian child's tribe, whether on or off the reservation;
 - . an Indian foster home licensed or approved by the Department; or
 - . a group home or child care institution approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

The Indian child's tribe may establish a different order of placement choices.

- 3) The Indian child's tribe will be notified that a petition for custody of an Indian child has been filed.
- 4) The parents, guardians, or custodians of an Indian child have the right to request transfer of the child custody proceedings to an Indian court.
- 5) Either parent of an Indian child has the right to stop the transfer of the child custody proceedings to an Indian court.
- 6) American Indian children can be kept in temporary custody without a court adjudication for only 90 days.
- 7) A court decision that an American Indian child shall be removed from his home must be supported by:
 - . clear and convincing evidence that the child is in danger if returned to his parents; and
 - . the testimony of expert witnesses who are knowledgeable of Indian customs.
- 8) All parties to the child custody proceedings have the right to examine all reports or documents the Department may present during the proceedings.

**INDIAN CHILD WELFARE ACT PROVISIONS FOR THE TERMINATION
OF PARENTAL RIGHTS TO AMERICAN INDIAN CHILDREN**

- 1) The Indian child's tribe will be notified that a petition to terminate parental rights to an Indian child has been filed.
- 2) The parents, guardians, or custodians of an Indian child have the right to request transfer of the termination proceedings to an Indian court.
- 3) Either parent of an Indian child has the right to stop the transfer of the termination proceedings to an Indian court.
- 4) An Illinois court decision that parental rights to an American Indian shall be terminated must be supported by:
 - . evidence beyond a reasonable doubt that the child is likely to suffer serious emotional or physical injury if returned to his parents; and
 - . the testimony of expert witnesses who are knowledgeable of Indian customs.
- 5) All parties to the termination of parental rights proceedings have the right to examine all reports or documents the Department may present during the proceedings.

**INDIAN CHILD WELFARE ACT PROVISIONS FOR
VOLUNTARY ADOPTION SURRENDERS/CONSENTS**

- 1) If parents of an American Indian child wish to surrender the child for adoption voluntarily, their consents must be executed in court before a judge. Adoption surrenders/consents for an Indian child signed at a Department office or child welfare agency are not valid.
- 2) Parents of an American Indian child shall not voluntarily surrender the child for adoption unless ten days have passed since the birth of the child. A father shall not voluntarily surrender an unborn child prior to the child's birth.
- 3) According to federal law, a voluntary adoption surrender/consent for an American Indian child is revocable:
 - . at least until the court has ordered a termination of parental rights; and
 - . in some instances, until the adoption is finalized.
- 4) If a court finds that fraud or duress was used to obtain a voluntary adoption surrender/consent of an American Indian child, the adoption is voided and the child is automatically returned to his biological parents.
- 5) When selecting an adoptive placement of an Indian child, placement within an Indian setting shall be the placement of choice when no member of the child's extended family wants to adopt the child. If a non-Indian member of the child's extended family wants to adopt the child, this non-Indian relative shall be the placement of choice over an Indian who is not in the extended family.
- 6) The court is required to notify the Indian child's tribe of the adoption proceedings. The tribe may change the preferred order of adoptive placements.
- 7) If the adoptive placement fails or the adoptive parents wish to surrender their parental rights, the court is required to notify the Indian child's biological parents or the Indian custodian with whom the child was living prior to the adoption. The child's biological parents or Indian custodian may then petition for return of custody of the child.
- 8) When adopted Indian children reach age 18 and request information about their Indian lineage, the court is required to inform them of their biological parents' tribal affiliation. The court is also required to provide any other information needed to obtain the benefits of tribal membership.

APPENDIX FOR USE WITH VOLUNTARY ADOPTION
SURRENDER/CONSENT FORMS

Instructions for staff: Type the following information on a sheet of white paper and attach it to the voluntary adoption surrender/consent used for non-Indian children. One of these forms is required for each biological parent of the American Indian child, regardless of the parent's own Indian status.

I, _____, mother/father of
_____, _____ male child; state:

- . that this child, born on _____ which is more than 10 days before the day I will sign the voluntary adoption surrender consent, is an American Indian child;
- . that I understand that these adoption proceedings must comply with the provision of the federal law known as the Indian Child Welfare Act;
- . that the provisions of the Indian Child Welfare Act have been explained to me and have been given to me in writing. I understand that I have the right to withdraw this adoption surrender/ consent until the adoption of the child is finalized.

Signature of Biological Parent

Signed and Sworn Before Me
this _____ day of _____, 19____.